

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

In Re Estate of

THE JAMES D. GARRED  
REVOCABLE LIVING TRUST

No. 2:12-cv-00313 RSL

KELLY G. MERRILL, as Trustee of the James  
D. Garred Revocable Living Trust, Credit  
Shelter Trust Created by the James D. Garred  
Revocable Living Trust and the Marital Trust  
Created by the James D. Garred Revocable  
Trust,

Petitioner,

v.

CHRISTOPHER MOORE, an individual; and  
CREASON, MOORE, DOKKEN & GEIDL,  
PLLC, an Idaho Limited Liability Company,

Respondents.

ANSWER AND AFFIRMATIVE  
DEFENSES TO PETITION TO RECOVER  
DAMAGES AND FOR BREACH OF  
FIDUCIARY DUTIES, FRAUD, LEGAL  
MALPRACTICE AND CONSPIRACY

Respondents Christopher Moore and Creason, Moore, Dokken & Geidl, PLLC,  
("Creason firm") answer the Petition to Recover Damages for Breach of Fiduciary Duties, Fraud  
and Legal Malpractice and Conspiracy as follows:

**I. RELIEF REQUESTED**

1. Answering petitioner's first unnumbered paragraph, respondents admit Petitioner  
is the acting trustee and a beneficiary of the James D. Garred Revocable Trust and the associated

1 Credit Shelter Trust and Marital Trust created by her father, James D. Garred, admit Mr. Garred  
2 died on or about March 13, 2008, and admit the James D. Garred Revocable Trust instrument  
3 says only what it says. Respondents deny all the remaining allegations.

4 2. Answering petitioner's second unnumbered paragraph, respondents admit that  
5 Christopher Moore and the Creason firm acted as counsel for decedent James Garred in certain  
6 respects, and acted as counsel for Patti Jo Garred as trustee of the James D. Garred Revocable  
7 Trust. Respondents also admit that petitioner filed a petition in King County Superior Court,  
8 which petition says only what it says, and that in February 2011 the Court entered an Order  
9 saying only what it says. Respondents deny all the remaining allegations.

10 3. Answering petitioner's third unnumbered paragraph, respondents admit that they  
11 provided petitioner copies of respondents' files regarding their representation of Patti Jo Garred  
12 as trustee. Respondents are without knowledge or information sufficient to form a belief  
13 regarding the truth or falsity of the allegations that petitioner obtained the corporate files for the  
14 entities owned by the trust, leases, financial statements, bank loan information and bank  
15 statements, and therefore deny the allegations, and also deny all the remaining allegations.

16 **II.**

17 1 - 3. Admit the allegations of paragraphs 1 - 3.

18 4. Admit that Patrick D. Garred is named as a beneficiary of the Credit Shelter Trust  
19 and a residual beneficiary of the Marital Trust. Respondents are without knowledge or  
20 information sufficient to form a belief regarding the truth or falsity of the allegations regarding  
21 Patrick Garred's residency, and therefore deny the same, and deny all other allegations of  
22 paragraph 4.

23 5. Admit that Scott G. Garred is named as a beneficiary of the Credit Shelter Trust  
24 and a residual beneficiary of the Marital Trust. Respondents are without knowledge or  
25 information sufficient to form a belief regarding the truth or falsity of the allegations regarding  
26

1 Scott Garred's residency, and therefore deny the same, and deny all other allegations of  
2 paragraph 5.

3 6. Admit that Wendy J. Trigsted was named as a beneficiary of the Credit Shelter  
4 Trust and a residual beneficiary of the Marital Trust. Respondents are without knowledge or  
5 information sufficient to form a belief regarding the truth or falsity of the allegations regarding  
6 Wendy Trigsted's residency, and therefore deny the same, and deny all other allegations of  
7 paragraph 6.

8 7. Admit that Christopher Moore was James Garred's attorney regarding certain  
9 estate planning matters; admit Moore represented Patti Garred as trustee of the James D. Garred  
10 Revocable Trust; admit the James D. Garred Revocable Trust says only what it says; and admit  
11 Moore is a resident of Lewiston, Idaho, and licensed to practice law in both Idaho and  
12 Washington. Except as so expressly admitted, respondents deny the allegations of paragraph 7.

13 8. Admit the Creason firm is an Idaho professional limited liability company; admit  
14 the four named members of the firm are all licensed to practice law in both Idaho and  
15 Washington; admit the Creason firm provided certain estate planning services for James Garred;  
16 and admit the Creason firm represented Patti Jo Garred in her role as trustee of the James D.  
17 Garred Revocable Trust. Except as so expressly admitted, respondents deny the allegations of  
18 paragraph 8.

19 **III. JURISDICTION AND VENUE**

20 1. Paragraph 1 contains legal conclusions to which no answer is required. To the  
21 extent an answer is required, the allegations are denied.

22 2. Paragraph 2 contains legal conclusions to which no answer is required. To the  
23 extent an answer is required, the allegations are denied.

24 3. Admit that the James D. Garred Revocable Trust says only what it says. Admit  
25 that petitioner filed a probate action in King County. Beyond this, paragraph 3 contains legal  
26

1 conclusions to which no answer is required. To the extent an answer is required, however, the  
2 allegations are denied.

3 **IV. NOTICE OF THIS PETITION**

4 Admit petitioner served respondents with the Petition and Summons, and otherwise deny  
5 the allegations of Section IV.

6 **V. STATEMENT OF FACTS**

7 **A.**

8 1. Are without knowledge or information sufficient to form a belief regarding the  
9 truth or falsity of the allegations of paragraph 1 and therefore deny them.

10 2. Admit the allegations of paragraph 2.

11 3. Admit that James D. Garred owned and managed the Highland Grocery, the  
12 Bistro, a combination gas station and convenience store, and admits Mr. Garred owned rental  
13 properties, all in Clarkston, Washington. Except as so expressly admitted, respondents deny the  
14 allegations of paragraph 3.

15 4. Admit the allegations of paragraph 4.

16 5. Admit James Garred and Patti Jo Garred completed a prenuptial agreement, and  
17 admit the prenuptial agreement says only what it says, and deny the remaining allegations of  
18 paragraph 5.

19 6. Admit Mr. Garred and Patti Jo Garred executed the Amended James D. Garred  
20 Revocable Trust on January 15, 2008; admit Christopher Moore revised the estate plan  
21 documents, admit those estate planning documents say only what they say, and otherwise deny  
22 the allegations of paragraph 6.

23 7 - 12. Admit the James D. Garred Revocable Trust says only what it says, and otherwise  
24 deny the allegations of paragraph 7 - 12.

25 13. Admit that Mr. Moore met with Kelly Merrill at her father's home prior to his  
26 death, and deny the remaining allegations of paragraph 13.

1           14.     Admit that Mr. Garred died on March 13, 2008, and deny the remaining  
2     allegations of paragraph 14.

3           15.     Admit that Mr. Moore met with Kelly Merrill and her siblings at the Creason  
4     firm's offices shortly after Mr. Garred's death; and admit that Mr. Moore told Ms. Merrill and  
5     her siblings that he represented Patti Garred as trustee. Except as so expressly admitted,  
6     respondents deny the allegations of paragraph 15.

7           16.     Admit that the federal estate tax return for Mr. Garred's estate says only what it  
8     says, and deny the remaining allegations of paragraph 16.

9           **B.**

10          1.     Admit that the James D. Garred Revocable Trust says only what it says and deny  
11     the remaining allegations of paragraph 1.

12          2.     Deny the allegations of paragraph 2.

13          3.     Admit the file labeled "Credit Shelter Trust" says only what it says. Except as so  
14     expressly admitted, respondents deny the allegations of paragraph 3.

15          4.     Admit to having prepared a change of registered agent assignment form and  
16     amended certificate regarding Garred Properties LLC; and admit the transfer had not occurred  
17     prior to respondents' withdrawal in December 2011. Except as so expressly admitted,  
18     respondents deny the allegations of paragraph 4.

19          5.     Admit Ms. Merrill signed an "authorization for obtaining employee identification  
20     number" which says only what it says. Admit to having obtained an EIN for the Credit Shelter  
21     Trust. Except as so expressly admitted, respondents deny the allegations of paragraph 5.

22          6.     Admit the January 9, 2009, email referenced in paragraph 6 says only what it  
23     says. Except as so expressly admitted, respondents deny the allegations of paragraph 6.

24          7.     Admit the March 3, 2010, email referenced in paragraph 7 says only what it says.  
25     Except as so expressly admitted, respondents deny the allegations of paragraph 7.

1           8.       Admit only that they had certain communications with Ms. Merrill between 2008  
2 and 2010, and that the March 3, 2010, email referenced in paragraph 8 says only what it says.  
3 Except as so expressly admitted, respondents deny the allegations of paragraph 8.

4           9.       Admit the August 20, 2009 and January 6, 2010, emails referenced in paragraph 9  
5 say what they say. Except as so expressly admitted, respondents deny the allegations of  
6 paragraph 9.

7           10.      Deny the allegations of paragraph 10.

8           **C.**

9           1.       Admit only that they had certain communications with Ms. Merrill between 2008  
10 and 2010. Except as so expressly admitted, respondents deny the allegations of paragraph 1.

11          2.       Admit that the June 2, 2010, email and notes referenced in paragraph 2 say only  
12 what they say. Admit also only that, between 2008 and 2010, they sometimes had certain  
13 communications with their client, Patti Garred as trustee, that they did not have with Ms. Merrill,  
14 who was not their client. Except as so expressly admitted, respondents deny the allegations of  
15 paragraph 2.

16          3.       Admit that no income tax returns for trust business entities or the trust had been  
17 filed by December 2010. Admit also only that, between 2008 and 2010, they sometimes had  
18 certain communications with their client, Patti Garred as trustee, that they did not have with Ms.  
19 Merrill, who was not their client. Except as so expressly admitted, respondents deny the  
20 allegations of paragraph 3.

21          4.       Admit that the billing statements and May 25, 2010, email referenced in  
22 paragraph 4 say only what they say. Admit also only that, between 2008 and 2010, they  
23 sometimes had certain communications with their client, Patti Garred as trustee, that they did not  
24 have with Ms. Merrill, who was not their client. Except as so expressly admitted, respondents  
25 deny the allegations of paragraph 4.  
26

1           5.       Admit that the billing statements and August 16, 2010, email referenced in  
2 paragraph 5 say only what they say. Admit also only that, between 2008 and 2010, they  
3 sometimes had certain communications with their client, Patti Garred as trustee, that they did not  
4 have with Ms. Merrill, who was not their client. Except as so expressly admitted, respondents  
5 deny the allegations of paragraph 5.

6           6.       Admit that the billing statements, letters and October 15, 2010, email cited in  
7 paragraph 6 say only what they say. Except as so expressly admitted, respondents deny the  
8 allegations of paragraph 6.

9           **D.**

10          1.       Deny the allegations of paragraph 1.

11          2.       Admit that the January 19, 2009, email referenced in paragraph 2 says only what  
12 it says. Except as so expressly admitted, respondents deny the allegations of paragraph 2.

13          3.       Admit that the January 19, 2009, email referenced in paragraph 3 says only what  
14 it says. Except as so expressly admitted, respondents deny the allegations of paragraph 3.

15          4.       Admit that the January 30, 2009, email referenced in paragraph 4 says only what  
16 it says. Except as so expressly admitted, respondents deny the allegations of paragraph 4.

17          5.       Admit that Garred Properties LLC was managed by a third party; are without  
18 information or knowledge sufficient to form a belief regarding the truth or falsity of the date on  
19 which Ms. Merrill began receiving statements from the property manager and therefore deny that  
20 allegation. Except as so expressly admitted, respondents deny the allegations of paragraph 5.

21          6.       Admit that Garred Properties LLC was managed by a third party. Except as so  
22 expressly admitted, respondents are without information or knowledge sufficient to form a belief  
23 regarding the truth or falsity of the allegations and therefore deny the same.

24          7.       Admit that the February 2, 2009, emails referenced in paragraph 7 say only what  
25 they say; admit that Patti Garred did not make certain loan payments timely; and admit to having  
26

1 assisted Ms. Garred make certain loan payments through the firm's trust account. Except as so  
2 expressly admitted, respondents deny the allegations of paragraph 7.

3 8. Admit that the email dated February 19, 2009, says only what it says. Except as  
4 so expressly admitted, deny the allegations of paragraph 8.

5 9. Admit that Patti Jo Garred is trustee of the James D. Garred Revocable Trust and  
6 did not make distributions to the Credit Shelter Trust in January, February or March 2009.

7 Admit that the email referenced in paragraph 9 says only what it says. Except as so expressly  
8 admitted, respondents deny the allegations of paragraph 9.

9 10. Admit that, in July 2009, Mr. Moore assisted Ms. Garred as trustee in finalizing  
10 the sale of certain Highland Grocery, Inc., property and equipment; admit that, after the sale was  
11 finalized, Patti Garred as trustee made no distributions to fund the Credit Shelter Trust or Marital  
12 Trust. Except as so expressly admitted, respondents deny the allegations of paragraph 10.

13 11. Deny the allegations of paragraph 11.

14 12. Admit that certain individuals running the Bistro embezzled funds. Admit these  
15 individuals were criminally prosecuted, and admit Ms. Garred took over management of the  
16 Bistro. Are without knowledge or information sufficient to form a belief as to the truth or falsity  
17 of petitioner's allegations regarding her knowledge of these events, and otherwise deny the  
18 allegations of paragraph 12.

19 13. Admit that the January 6, 2010, email referenced in paragraph 13 says only what  
20 it says. Except as so expressly admitted, respondents deny the allegations of paragraph 13.

21 14. Admit that the March 2, 2010, email referenced in paragraph 14 says only what it  
22 says. Except as so expressly admitted, respondents deny the allegations of paragraph 14.

23 15. Admit that the email dated March 11, 2010, referenced in paragraph 15 says only  
24 what it says. Except as so expressly admitted, respondents deny the allegations of paragraph 15.

25 16. Admit that the May 20, 2010, email referenced in paragraph 16 says only what it  
26 says. Except as so expressly admitted, respondents deny the allegations of paragraph 16.



17. Admit that at some point the gas station and convenience store stopped selling gasoline; admit that Mr. Moore had certain communications with the Department of Ecology and landlord regarding the convenience store's gas tanks. Except as so expressly admitted, respondents deny the remaining allegations of paragraph 17.

**E.**

1. Deny the allegations of paragraph 1.

2. Deny the allegations of paragraph 2.

3. Admit that the August 27, 2009, and August 30, 2009, emails, and the August 30, 2009, letter referenced in paragraph 3 say only what they say. Except as so expressly admitted, respondents deny the allegations of paragraph 3.

4. Admit that the March 3, 2010, email referenced in paragraph 4 says only what it says. Except as so expressly admitted, respondents deny the allegations of paragraph 4.

5. Admit that the billing statements referenced in paragraph 5 say what they say; admit that a copy of the sublease between Patti Jo Garred and Jodi Brunelle was produced as part of respondents' file; and admit that the sublease says only what it says. Except as so expressly admitted, respondents deny the allegations of paragraph 5.

6. Admit that the January 4, 2010, email referenced in paragraph 6 says only what it says. Admit also only that, between 2008 and 2010, they sometimes had certain communications with their client, Patti Garred as trustee, that they did not have with Ms. Merrill, who was not their client. Except as so expressly admitted, respondents deny the allegations of paragraph 6.

**F.**

1. Are without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations regarding what Ms. Merrill learned from third parties about payment for a storage unit or when, and therefore deny them, and otherwise deny the allegations of paragraph 1.

2. Admit that Ms. Merrill at some point retained Jared Phillips. Except as so expressly admitted, respondents deny the allegations of paragraph 2.

3. Admit that no distributions had been made to the Credit Shelter Trust or to its beneficiaries. Except as so expressly admitted, respondents deny the allegations of paragraph 3.

4. Admit Mr. Phillips contacted Mr. Moore in November 2010 to request certain documents. Admit that the letter referenced in paragraph 4 says only what it says and admit that no documents were provided to Mr. Phillips by the second week of December 2010. Except as so expressly admitted, respondents deny the allegations of paragraph 4.

**G.**

1. Admit Mr. Phillips left a voicemail for Mr. Moore in late December 2010, and otherwise deny the allegations of paragraph 1.

2. Admit that Mr. Moore sent Mr. Phillips a letter dated December 22, 2010, admit that the letter says only what it says, and deny the remaining allegations of paragraph 2.

3. Are without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of paragraph 3, and therefore deny the same.

4. Admit petitioner filed a petition to remove her stepmother as trustee, and admit an order was entered and that the order says only what it says. Except as so expressly admitted, respondents deny the allegations of paragraph 4.

**H.**

1. Are without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of paragraph 1, and therefore deny the same.

2. Admit Mr. Moore met with the representative of the Department of Ecology in late 2010, and admit that the billing statements referenced in paragraph 2 say what they say. Except as so expressly admitted, respondents deny the allegations of paragraph 2.

3. Admit that Mr. Moore met with Ms. Merrill and her counsel in February 2011, and admit that the billing statements and email referenced in paragraph 3 say only what they say.

Admit also only that, between 2008 and 2010, they sometimes had certain communications with their client, Patti Garred as trustee, that they did not have with Ms. Merrill, who was not their client. Are without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations regarding what Ms. Merrill found in the basement of Jim's ExpressMart or her reaction to what she found, and therefore deny the allegations and also deny all remaining allegations of paragraph 3.

4. Deny the allegations of paragraph 4.

5. Deny the allegations of paragraph 5.

6-7. Admit that to assist Ms. Garred as trustee, the firm's trust account was used for the receipt of certain rental property funds and payment of certain bills. Admit also that few of the firm's trust-related invoices were paid while Ms. Garred was trustee. Except as so expressly admitted, respondents deny the allegations of paragraph "6-7."

8. Deny the allegations of paragraph 8.

## **VI. STATEMENT OF CLAIMS**

1 - 8. Respondents reallege and incorporate by reference their answers to the preceding paragraphs and deny all allegations, and deny petitioner is entitled to any relief.

## **VII. LEGAL AUTHORITY**

A. Admit that the James D. Garred Revocable Trust instrument says only what it says. Except as so expressly admitted, respondents deny the allegations of Section VII.A, and deny that petitioner is entitled to any relief. Further, respondents state that Mr. Moore has resigned as trust protector and the other members of his firm have declined to serve as trust protector.

B-G. Deny the allegations of Sections B-G, and deny that petitioner is entitled to any relief.

## **VIII. CONCLUSION**

Deny the allegations of Section VIII, and deny that petitioner is entitled to any relief.

**AFFIRMATIVE DEFENSES**

BY WAY OF FURTHER ANSWER, and as AFFIRMATIVE DEFENSES, the respondents allege as follows:

1. Petitioner's claims are barred for failure to state a claim upon which relief can be granted.

2. Petitioner's claims are barred by applicable statutes of limitation.

3. Petitioner's claims are barred by the doctrines of waiver, laches and unclean hands.

4. Jurisdiction does not arise under RCW 11.96A.

5. Petitioner's losses, if any, were caused in whole or in part by the fault of others, including petitioner's own fault before and/or after she was appointed trustee of the James A. Garred Revocable Trust. This also includes the fault of non-parties, including but not limited to Patti Garred, Robert Bishop, and/or Anna Bishop.

6. Petitioner's claims are barred, in whole or in part, by the doctrine(s) of comparative negligence, comparative responsibility, and/or comparative fault.

7. Petitioner's claims are barred, in whole or in part, because she consented to the alleged conduct about which she complains.

8. Some or all of the petitioner's claims are barred, in whole or in part, based on lack of standing.

9. Petitioner's claims are barred, in whole or in part, by the doctrine of judgmental immunity.

10. Petitioner's claims are barred, in whole or in part, by her failure to mitigate damages.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered the Petition, the respondents request that the Court grant them the following relief:

- a. That petitioner's claims be dismissed with prejudice;
- b. An award of attorney fees and costs; and
- c. For such other relief as the Court deems just and equitable.

DATED this 1st day of March, 2012.

BYRNES KELLER CROMWELL LLP

By /s/ Steven C. Minson

Bradley S. Keller, WSBA #10665

Paul R. Taylor, WSBA #14851

Steven C. Minson, WSBA #30974

1000 Second Avenue, 38<sup>th</sup> Floor

Seattle, WA 98104

Telephone: (206) 622-2000

Email: [bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)

[ptaylor@byrneskeller.com](mailto:ptaylor@byrneskeller.com)

[sminson@byrneskeller.com](mailto:sminson@byrneskeller.com)

Attorneys for Respondents

Christopher Moore, and Creason, Moore, Dokken &  
Geidl, PLLC

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 1st day of March, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Bruce A. McDermott  
Teresa Byers  
Garvey Schubert Barer  
1191 Second Avenue, 18<sup>th</sup> Floor  
Seattle, WA 98101-2939  
[bmcdermott@gsblaw.com](mailto:bmcdermott@gsblaw.com)  
[tbyers@gsblaw.com](mailto:tbyers@gsblaw.com)  
*Attorneys for Petitioner*

/s/ Steven C. Minson  
Steven C. Minson, WSBA #30974  
Byrnes Keller Cromwell LLP  
1000 Second Avenue, 38th Floor  
Seattle, WA 98104  
Telephone: (206) 622-2000  
Facsimile: (206) 622-2522  
[sminson@byrneskeller.com](mailto:sminson@byrneskeller.com)  
**Attorneys for Respondents**